

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In The Matter of)
)
Amendment of Rule 73.202(b)) MM Docket No. 92-200
Table of Allotments) RM-8018
FM Broadcast Stations)
Bronson and Cross City, FL)

RECEIVED

JAN 14 1994

TO: Chief, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MOTION TO STRIKE OR ALTERNATIVELY
OPPOSITION TO PETITION TO DISMISS AND RETURN

Women in FLA Broadcasting, Inc. ("Women"), by its attorneys, hereby submits its opposition to an untimely "Petition to Dismiss and Return" filed on November 2, 1993 by Dickerson Broadcasting, Inc. ("Dickerson") in the above referenced rulemaking proceeding.

**I. Dickerson's comments should be stricken
as procedurally defective**

Dickerson's Petition should be summarily stricken, because it was filed well outside the pleading cycle and was not accompanied by any explanation or good cause showing as to why it should be accepted at this late date. Section 73.415 of the Commission's Rules states that interested parties shall be afforded a reasonable period of time in which to file comments in Commission rulemaking proceedings, and that such periods will be set out in the applicable Notice of Proposed Rulemaking. That Rule further states that following such periods, no further comments will be entertained without specific Commission authorization. Pursuant to Notice of Proposed Rulemaking, in MM Docket 92-200, __ FCC Rcd __, released September 9, 1992, all comments in this proceeding were to

No. of Copies rec'd
List ABCDE

074

have been filed by November 2, 1992, and any replies thereto were to have been submitted by November 17, 1992.

Dickerson's Petition was not filed until November 2, 1993, nearly a year after the close of the applicable comment period. Despite the exceedingly late submission of this pleading, Dickerson failed to request authorization for the filing as required by the rules. Dickerson offered no explanation for why its pleading was so late or indeed why such pleading could not have been filed during the specified period.¹ Extending rulemaking comment filing deadlines indefinitely in order to allow such late filed pleadings would disserve the public interest by unduly delaying Commission action. See e.g. Rule Making Proceedings, 38 RR 2d 1547 (1976). Therefore, Dickerson's late filed petition must be stricken as procedurally defective.

II. Dickerson's Petition is Wholly Without Merit And Should be Summarily Denied.

However, if arguendo Dickerson's untimely pleading is considered, it should be summarily dismissed as nothing more than a classic strike petition designed to impede and delay Women's efforts to provide new or enhanced service to the public.

The bulk of Dickerson's arguments concern the public interest considerations associated with Women's proposal to change its community of license from Cross City to Bronson, Florida. These

¹ There is also evidence that Dickerson was aware of Docket 92-200 at least as far back as April of 1993. In a Petition for Reconsideration filed on April 27, 1993, in MM Docket 92-195, Dickerson discusses WDFL-FM's desire to change service from Cross City to Bronson.

arguments were raised by other parties earlier in this proceeding, and were fully addressed by Women in its Reply Comments, filed November 17, 1992.²

The remainder of Dickerson's arguments are based on misconceptions of fact and the requirements placed on licensees and applicants by the Commission's Rules. For example, Dickerson alleges that Women has failed to construct its upgraded Class C1 facility, despite its authorization to do so pursuant to Rulemaking in MM Docket 87-455. However, Dickerson conveniently disregards the fact that Women has filed a minor modification application on FCC form 301 as well as an amendment thereto seeking to obtain a construction permit for those facilities. That application remains pending before the FCC.

In addition, Dickerson erroneously argues, that Women has failed to provide adequate public notice of its latest rulemaking request, and that it has failed to properly maintain WDFL-FM's public inspection files. Despite the fact that Women's rulemaking request in MM Docket 92-200 would change the allotment of Channel 295 from Cross City to Bronson, Florida, the Commission's rules do not require the provision of local public notice, upon the filing of such a request. Contrary to Dickerson's conclusion, rulemaking

² Nonetheless, one allegation bears comment. Dickerson's statement implying that Women would abandon its AM station in Cross City if its petition to reallocate the FM Channel were granted is patently absurd. WDFL-AM is a separately licensed facility and is currently operating in full compliance with the Commission's rules. Women has made no representations with respect to relocating or abandoning this existing facility, and has every intention of continuing to fulfill its obligations to the station's community of license.

requests to change the table of allotments are not subject to the provisions contained within Section 73.3580. Such requests are only subject to the official notice provisions contained within Section 1.412. Therefore, in full accordance with Section 73.3526(a), neither the rulemaking request itself, nor any notice thereof, was placed in the station's public inspection file.

Similarly, neither the application for minor modification to upgrade WDFL-FM's facilities and specify operation on third adjacent Channel 295C1, nor the amendment thereto, was required to be placed in the stations public inspection file. Section 73.3573(a)(1) specifically provides that such a modification to upgrade on an adjacent channel may be filed as a minor change application. Therefore, pursuant to an exception contained in Section 73.3580(a)(1), such a minor change application, as well as any amendments thereto, need not have been placed in WDFL-FM's public inspection file.

Finally, Dickerson attempts to impugn the character of this Commission licensee by alleging without any support whatsoever that Women is attempting to conceal information from both the Commission and the general public. Dickerson implies that Women had an obligation to identify Mr. Johnson as a principal of the licensee when he prepared engineering on their behalf. However, no requirement exists for the disclosure of principals either when filing a request for rulemaking, or when filing an application for a minor modification of existing facilities. In fact, Mr. Johnson's interest in Women is a matter of public record, and may be found within the licensee's ownership reports on file with the


Commission and within the WDFL-FM's public inspection file - had Dickerson bothered to look..

WHEREFORE, for the foregoing reasons, Women respectfully requests that Dickerson's untimely petition be stricken as procedurally defective, or alternatively be summarily dismissed as a frivolous attempt to impede this proceeding.

Respectfully submitted,

WOMEN IN FLA BROADCASTING, INC.

By: 
Robert J. Rini

By: 
Evan D. Carb

Its Attorneys

Rini & Coran, P.C.
1350 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 296-2007

Date: January 14, 1994

CERTIFICATE OF SERVICE

I, Rhonda Parrish, a secretary with the law firm of Rini & Coran, do hereby certify that I caused a copy of the foregoing "Motion To Strike or Alternatively Opposition to Petition to Dismiss and Return" to be mailed, first-class, postage prepaid this 14th day of January, 1994 to the following:

John M. Spencer, Esq.
Leibowitz & Spencer
One S. E. Third Avenue
Suite 1450
Miami, FL 33131

Benjamin Dickerson
Drawer 520
1421 S. Water St.
Starke, FL 32091

David G. O'Neil, Esq.
Haley Bader & Potts
4350 N. Fairfax Drive, Suite 900
Arlington, Virginia 22203
Counsel for Sarasota-FM, Inc.

David D. Oxenford, Jr., Esq.
Fisher Wayland et al.
1255 23rd Street, N.W., Suite 800
Washington, D.C. 20037
Counsel for Gator Broadcasting Corporation

Mr. Greg Stickland
20730 N.E. Fourth Place, #204
Miami, FL 33179

